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ATTACHMENT

POSITION PAPER ON TECHNICAL PANEL EXCHANGE

In general the numbers listed below are keyed to the numbers set forth in Annex C to the JCS Revision, document DCS/5 B.

1. The JCS suggests addition of Poland and Czechoslovakia to the countries to be inspected on the ground that the proposed five nations would afford an advantage to the USSR over the Allies from an intelligence standpoint. This warrants careful consideration and it is suggested that the intelligence to be gained by the USSR in the four "western countries" is far outweighed by the intelligence to be gained by an inspection in Russia proper. One of the unique features of the inspection proposal is that the United States stands to gain far more than it would lose by an inspection in view of the paucity of information available currently from within the boundaries of Russia.
2. We do not object to this change but see no necessity since the composition is covered in Annex B. Further, the original wording is repeated in paragraph II A. 1. of the original position paper as well as in the JCS Revision.
3. Concur.
4. Again it occurs to us that on the theory of net gain to the United States, photography from the ground is a highly desirable feature. Therefore, the JCS suggestion should be carefully considered before deletion of ground photography.
5. Believe immaterial but have no objection to JCS changes. Immediately following their insert are the words "the date" which should read "the data".
6. The JCS suggests limitation of inspection to one each of the various categories rather than the suggested two on the grounds that this should suffice for a test inspection. If it is true that the United States has more to gain by inspection than does the USSR, we see no reason at this stage to limit inspection to one rather than two. Believe this warrants further consideration.
7. We must defer to the Atomic Energy experts on this one.

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8. Concur.

Note: In the JCS position paper there are two footnotes labeled 8, one occurring in the letter part of the Abstract and the other occurring in item 4 of the Terms of Reference. We would concur in both suggestions for change.

9. Concur.

Item 7 of the Terms of Reference in the JCS paper refers to agreements whereas the original position paper refers to arrangements. We have a slight preference for the original.

In I. A. 1., there is a parenthetical statement "with the exception of item 8" obviously referring to item 8 of the Abstract and item 3 h. of paragraph I. A. For clarity this should be corrected.

9a. Same as 4.

10. Same as 3.

11. Concur.

"Objects of control" in I. A. 3. should read "objects of inspection". They are so referred to in Annex B, paragraph 2 B.

12. Same as 6 with respect to two installations versus one; otherwise concur that the JCS description is more accurate and really spells out two different types of Army installations.

13. Same as 7.

14. Agree with JCS insertion of the word "and". Believe insertion of "its members" is unnecessary and inconsistent with paragraph 2 of Annex B of both the original and JCS Revision.

15. Concur.

The title to Annex A "Identification of Objects of Control" should properly be "Objects of Inspection". See comment above after item 11.

16. Same as 6.

The first sentence of item 1. states that inspection will "be limited to". Suggest consideration to insert "include" in lieu of "be limited to" in order to assure coverage. On balance the positive statement seems to accomplish more of the purpose than the negative limitation. If adopted, the title should also be adjusted.

17. Concur.

18. Concur.

19. Concur.

20. Concur.

21. Concur.

22. Same as 6.

23. Same as 6.

24. Same as 6; concur in the restatement of the types of air bases.

25. Concur.

26. Same as 17.

27. Same as 18.

28. Concur.

29. It is suggested that if the net gain concept is applicable in operational units, it would be equally applicable with respect to "sensitive" training equipment. Therefore, would suggest retention of original wording. Nonconcurrence with JCS suggestion.

Item 5 n. Both variations refer to external examination of aircraft. In consideration of principles of net gain to the United States in the intelligence field, why not suggest internal examination of aircraft.

30. Same as 6.

31. It would appear that this information would be just as sensitive to the USSR as it is to the United States. Therefore, on an intelligence basis, it might be desirable to retain the original wording.

32. Agree with the suggested inclusion of examination of submarines but again why not include internal examination as well as external.

33. Concur.

34. Concur.

35. Concur.

36. JCS suggests deletion of the item on the basis of sensitivity. In lieu of the possible net gain to the United States, this should be considered carefully.

37. Same as 36.

38. Concur.

39. Same as 12.

40. Concur.

41. Concur.

42. Concur.

43. Concur.

44. Concur.

45. Concur.

46. Concur.

47. Concur.

48. Same as 7 as to the technical aspects. The wholesale deletion in the JCS Revision suggests complete negative approach in this one field and appears inconsistent with the positive theme of this inspection concept.

49. Concur.

50. The JCS Revision here that the access to budgets will be as mutually agreed on opens the door completely to the possibility of not agreeing on anything and it is believed that this approach is negative and the United States stands to gain more by access than does the USSR.

51. The JCS merely notes consistency as the reason for this change. However, it is for consistency with the JCS position with relation to nuclear energy establishments and if they are overruled otherwise on this subject, it should not be deleted. The insertion of naval base and Army base is acceptable but do not believe that shipyards should be deleted.

52. Concur.

53. Concur.

54. Same as 2.

55. Concur.

56. Concur.

57. Concur.

Note: In the JCS Revision in Annex B there is no 57 indicated although it is obvious that it refers to paragraph 2 b.

58. We disagree with the JCS suggestion here in that the basic paragraph 2 is attempting to explain what are the rights, privileges and immunities and 2 d. originally intended to explain the immunity to panel members, etc., from control, search, seizure, and the rest. In any event it is probable that this subparagraph should be rewritten in its entirety to assure the precise expressions of intent.

59. Concur.

60. We believe the JCS Revision accomplishes no change and that their reason for change is not explanatory of the change. Prefer original wording.

61. Concur.

62. Concur.

63. The JCS Revision deletes reference to use of codes and provides for reports in mutually agreed method. I believe the JCS suggestion is subject to the same criticism that they direct at the original wording in that it may prove controversial. Therefore it might be better to delete entirely.

64. Concur.

65. Concur.

66. It occurs to us that once the data concerned has been made available to England, Canada, France and the USSR, that from the United States standpoint there is no justification for classification in the accepted sense. Since it is available both to friendly and "unfriendly" countries, there seems to be no legal basis for classification in the United States sense and no necessity for it in the UN sense. Therefore recommend deletion of this item.

67. Concur.

68. Concur.

69. Concur.

70. Concur.

71. Concur.

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8-9958

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22 September 1955

MEMORANDUM FOR: Special Assistant to the Director for Planning and Coordination

SUBJECT : Plan for Technical Panel for Test Inspection of Armaments

1. As suggested in your memorandum of 13 September, we have reviewed the position paper on the Technical Panel Exchange, number DCS/5, dated 19 August 1955 and the JCS Revision which appears as DCS/5 B, dated 2 September 1955.

2. In addition, we have reviewed the letter from the Department of Justice to Mr. Stessen dated 9 September 1955 in which it is indicated that legal opinions would be desirable from this Agency as well as others. It would appear that one of the principal questions of concern to the Department of Justice is whether or not the President may authorize other nations, including the USSR, to have access to classified facilities and documents.

3. The principal basis for classification arises from the provisions of Title 18 of the U. S. Code, sections 793 and 794. The statute has been implemented by Executive Order 10501. There are other specific statutes bearing on the subject such as section 796 of Title 18 of the U. S. Code relating to communications intelligence and cryptographic information. Also, the Atomic Energy Act of 1954 carries a special definition of Restricted Data. We believe that sections 793 and 794 would not act as a legal bar to approval by the President of the proposals for test inspections and although lawyers might engage in technical debates, the Department of Justice eventually will resolve the matter. As to section 796, this does not seem to be pertinent in view of the subject matter of the inspection. The Atomic Energy Act is a matter which can be left to AEC and Justice. It is also possible that if test inspection were to be under the auspices of the UN and pursuant to the treaty obligations of the United States, difficulties could be resolved in view of the constitutional provision

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that "all treaties made . . . under the authority of the United States shall be the supreme law of the land." We view all of these matters a problem for the Department of Justice and other agencies and no law directed specifically at CIA is pertinent.


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5. In reviewing the position papers on the Technical Panel and other background papers, we find an absence of any reference to intelligence activities. From this we would assume that it is the intent that the Panel members would not have access to the intelligence activities or programs of the various nations. In view of this, we believe that this Office would have little, if any, to contribute to the Department of Justice on this matter. However, we would be an interested auditor at any discussions along this line.

6. The comments contained in the attachment are offered for your consideration and possible assistance and are keyed to Annex C to the JCS Revision. We particularly invite your attention to item 66 relating to classification of reports and information assembled by the Panel. The original position paper suggested that they be labeled "secret." JCS has suggested that they be labeled "UN Secret." Our comment on this is that once having made the information available to friendly nations as well as the USSR, there would be little basis as a legal matter for classification in the accepted sense. We further commented that there appears to be little justification on a policy basis for labeling it "UN

Secret" for UN purposes. It is also possible that lack of classification could assist in solving part of the legal problem bothering the Department of Justice. If the data and information involved is declassified at the time of inspection, there would appear to be no basis for legal questions in transmitting the information. Certainly there are no legal bars to declassification by Presidential action.


Deputy General Counsel

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Attachment

LS 5-1003

27 April 1955

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for file
JSC

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Intelligence Advisory Committee Review of ELINT
Directives from the National Security Council

1. There is no statutory or legal requirement that proposed National Security Council Intelligence Directives be referred to the Intelligence Advisory Committee before presentation by the Director to the National Security Council. Paragraph 3a of NSCID #1 is, however, an administrative mandate to assure that no action is brought before the National Security Council without full coordination in the intelligence community.

2. To my personal recollection no thought was given to USCIB matters in drafting paragraph 3a, which requires concurrence or nonconcurrence of the Intelligence Advisory Committee. In any case, the Intelligence Advisory Committee's coordination is not a right of the Intelligence Advisory Committee but is a requirement of the National Security Council. Since lack of unanimity is resolved, according to paragraph 3a, so far as the National Security Council is concerned by decision of the Secretary of Defense, it would appear that the Secretary of Defense's approval of the ELINT paper would fulfill technical requirements of the National Security Council so far as the military members of the Intelligence Advisory Committee are concerned.

3. In addition, the Secretary of Defense was designated the Executive Agent of the Government for COMINT matters, and this Agency might well extend to the immediately related ELINT field. If so, the Secretary of Defense's approval could be taken as coordination for the Government.

4. As a practical matter, it might be well in connection with USCIB Directives to inform the Intelligence Advisory Committee that coordination would be achieved at the Secretary of Defense level and give the Intelligence Advisory Committee such information as might seem appropriate in each case.

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I believe there is no legal requirement to coordinate with the IAC on a USCIB Directive. Mr. Sheldon agrees with me that we might well advise the IAC when such a Directive is going through other channels. He tells me that the Directive here in question has been coordinated with State, which solves part of our problem.

LAWRENCE R. HOUSTON
General Counsel

Mr. Dulles. I would like to speak to you about this. 27 April 1955

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